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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1986

Addendum

UNITED REPUBLIC OF TANZANIA*

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* For the initial report submitted by the Government of the United Republic of Tanzania, see CCPR/C/1/Add.48; for its consideration by the Committee, see CCPR/C/SR.281-282 and 288 and Official Records of the General Assembly, Thirty-sixth session, Supplement No. 40 (A/36/40), paras. 202-226.

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I. INTRODUCTION

1. This is the second report being submitted by the Government of the United Republic of Tanzania in accordance with article 40 (1) of the Covenant on Civil and Political Rights. The report updates and complements the initial report submitted in 1979 (CCPR/C/1/Add.48) and has been prepared in accordance with the guidelines issued by the Human Rights Committee in document CCPR/C/21/Rev.1.

2. Since then, there have been two major developments, namely:

(a) Amendments to the Constitution of the United Republic of Tanzania to include a Bill of Rights in the body of the Constitution, unlike the previous one which set out the basic rights in the preambular paragraphs.

(b) Amendments to the Criminal Procedure Act (formerly the Criminal Procedure Code) aimed at bringing court practice into line with the standards set out in the International Covenant on Civil and Political Rights.

These developments will be discussed in detail in the report on the articles of the Covenant which have a bearing on their operation.

3. As its name implies, the United Republic of Tanzania is the product of the Union, on 26 April 1964, between Tanzania mainland, or Tanganyika as it was then known, and Zanzibar comprising the Islands of Zanzibar and Pemba. This explains the existence of two Constitutions, one for the Union and the other for Zanzibar. The fact that the provisions of the two Constitutions are identical is more a result of this history than an explanation of differences between the two parts of the Union. Therefore, in this report, references will be made to practice in Zanzibar only where this differs substantially from practice on the Mainland. Other references should be presumed to apply equally to the Islands. References to the Party Constitution apply to both the Mainland and Zanzibar as the ruling party is the same in both parts of the Union. Unfortunately the Constitution of Zanzibar is in Kiswahili and has not been translated into English.

II. INFORMATION CONCERNING THE APPLICATION OF ARTICLES 1 TO 27 OF THE COVENANT

Article 1

4. As indicated in the initial report, Tanzania is a firm believer in the principle of the right of peoples to self-determination. In Tanzania's understanding, this principle affirms the right of citizens to freely choose their government and its leaders without internal or external interference and to freely pursue economic, social and cultural development on the basis of equality without discrimination on grounds of race, colour, class, caste, creed or political conviction.

5. Tanzania has been an active participant in the search for the realization of the right to self-determination and independence of peoples still under colonial domination and minority rule in southern Africa and other parts of the world. That is why it has been in the forefront in supporting and furthering the objectives of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples through its active participation in the work of the Special Committee of 24. Its contribution to the struggle for the liberation of Angola, Mozambique, Zimbabwe and Namibia, among others, and its continued involvement in the ongoing struggle for the eradication of apartheid is a matter of public record. The same goes for the unflinching support it has given to the people of Palestine and Western Sahara in their struggle for self-determination and independence.

6. The theme of the right to self-determination of peoples runs deep in the Constitution of the ruling Party Chama Cha Mapinduzi (CCM), as well as in that of the United Republic of Tanzania. Thus, among the objectives of CCM as spelt out in paragraph 17 of the Party's aims and objectives, is the resolve to continue the struggle against colonialism, neo-colonialism, aggression and discrimination of all forms and to enhance good relations with other political parties and governments sharing these ideals.

7. On the economic side, section 24 (1) and (2) of the Constitution of the United Republic of Tanzania provides that every person has the right to own or hold any property lawfully acquired and that in pursuance of this right, no one shall be arbitrarily deprived of his property for purposes of acquisition without the authority of the law which in any case must set out conditions for fair and adequate compensation. The CCM Constitution makes clear in section 14, relating to the objectives of the Party, that ensuring that national resources are utilized for the development of the people, and primarily for the eradication of poverty, ignorance and disease, remains its overriding objective.

8. Externally, Tanzania has joined other States bordering South Africa in the establishment of the Southern African Development Coordination Conference, a regional grouping which aims at lessening the dependence of independent southern African States on South Africa, so as to further isolate and weaken the racist regime and force it to abandon its apartheid policies and at maximizing cooperation among themselves.

9. Tanzania is a one Party State which means that CCM has an absolute monopoly of power. But within the system, Tanzanians have been able to freely express their views and to have a say in the running of their affairs. The objective for Tanzanians has been to establish a system that is truly democratic. At independence both the Mainland and Zanzibar had inherited a multi-party system. But neither country enjoyed true democracy. These comments will be elaborated upon in our report on the implementation of the provisions of article 21.

10. It goes without saying that for the Party to have the moral authority to talk about democracy, it must itself be democratic in its organization and practice. Party leaders, ranging all the way from 10 cell leaders at the bottom, to branch, district, regional and national leaders, have to submit themselves to periodic elections which take place once every five years. Though only bona fide members of CCM can vote in these elections, they ensure that the CCM members are able to determine the leadership as well as influence the policy of the Party.

11. The President, Vice President, Ministers and Members of Parliament similarly have to submit to periodic elections. Though the candidates to the above posts have to be members of CCM and have to submit to the Party's screening process, the final word lies with all Tanzanians of the age of majority (18 years) at the general and by-elections. These elections enable the people to determine their leadership and, in an indirect but effective manner, the direction of State policy. Under section 38 (2) of the Constitution of the United Republic of Tanzania, election of the President may take place under the following circumstances:

(a) Upon the death of the President;

(b) Upon the dissolution of the Parliament;

(c) Upon the resignation of the President;

(d) Whenever the President becomes disqualified from holding office or where it is certified that the President is unable to discharge his functions due to mental or physical disability.

12. The right to the free disposal of property by foreigners is guaranteed in Tanzania. Owners may freely dispose of their lawfully acquired property. They may also freely repatriate any money accrued from its disposal. Unfortunately, due to the lack of adequate foreign exchange, it has become increasingly difficult in recent years to honour this obligation.

Article 2

13. The rights provided for in the Covenant have been incorporated as a Bill of Rights in sections 12 through 29 of the Constitution of the United Republic of Tanzania. These rights include the right to equality, the right to life, the right to personal freedom, the right to privacy and personal security, the right to freedom of movement, the right to freedom of conscience, the right to freedom of religion, the right to freedom of association, the right to

participate in national affairs, the right to work, the right to fair remuneration, the right to acquire and own property, and the right to education.

14. Similarly, the Constitution of CCM provides, inter alia, as its principal objective in Article I (5) that the Party shall strive to ensure that every individual has the right to receive from society protection of his life and of property held according to the Law, as well as to ensure that every person capable of working does work and to ensure that everyone receives a just return for his labour.

15. Furthermore, the Party also aims at ensuring that every citizen has the right to participate effectively in the decision-making process using the established forums and that he has the right to freedom of expression, of movement, of religious belief, as well as the right of association and to safeguard the inherent dignity of human beings in accordance with the Universal Declaration of Human Rights.

16. In the case of the right to public support in cases of old age, sickness, disablement, or other instances of undeserved want, the Government of Tanzania has provided for such schemes as workmen's compensation, maternity leave, sick leave for up to six months with pay and the National Provident Fund, to which both the employer and employee contribute, which becomes due to the employee after the completion of a fixed period of time agreed upon by contract.

17. Under section 11 of the Constitution of the United Republic of Tanzania, the Government undertakes to endeavour to ensure that equal and adequate opportunities are available to all persons to enable them to acquire knowledge and vocational training at all levels of education while section 12 of the Constitution of the United Republic of Tanzania provides for equality before the law of all human beings and their entitlement to recognition and respect for their dignity.

18. The rights to life and to personal freedom are provided for in sections 14 and 15 (1) of the Constitution of the United Republic of Tanzania, respectively. No person may be subject to arrest, detention, exile, restriction or deprivation of liberty, save in certain circumstances and subject to a procedure prescribed by law or in execution of a sentence or order of a court in respect of a criminal offence.

19. The Tanzanian Constitution furthermore guarantees citizens the right to privacy and personal security and the right to freedom of movement in sections 16 and 17 of the Constitution respectively. The right to privacy extends to respect for his person, private and family life, home and private correspondence. However, the State may impose limitations to this protection where these limitations are designed to ensure that the enjoyment of these rights and security by any individual shall not be prejudicial to the provisions of this section.

20. Persons legally present in Tanzania are entitled to freedom of movement and residence, that is the right to move freely within and to reside in any part of the United Republic of Tanzania, to enter and to leave it under section 17 of the Constitution. Furthermore, citizens enjoy immunity from

expulsion from Tanzania. However, these rights may be restricted in the execution of a sentence duly passed by a court order, or to secure the fulfilment of an obligation imposed by law on that person or to protect the interest of the public in general.

21. Moreover, people in Tanzania are guaranteed the right to freedom of expression under section 18 and the right to freedom of religion under section 19 (1). Freedom of expression entails the right to freely hold and express opinions and to seek, receive and impart information and ideas through any media, regardless of frontiers, and freedom from interference with his correspondence.

22. As can be seen from the 1986 Press Directory, a copy of which has been provided, the Registrar of Newspapers (i.e. a senior official in the Ministry of Information and Broadcasting) has been very liberal and has enabled the existence of a very strong, mostly private press. Several other publications have been registered since 1986, with a total of 13 registered in the period from January to September 1990 alone. Of the publications registered in the nine months of last year cited above, six were monthlies, six were quarterlies and one was a weekly. It is noteworthy that all but four were private owned. The same applies to virtually all the publications registered. Very few are owned and run by the Government, parastatal organizations and other public bodies. This is, in a very significant way, a clear manifestation of the tolerance and maturity with which the Government of Tanzania treats dissenting voices and views.

23. A private company has applied to the Registrar of Newspapers and the Bank of Tanzania for permission to export a total of 14 publications, all appearing in Kiswahili and all but one being privately owned. The permission has been granted. The publications in question are as follows: Ulimwengu wa Michezo; Nchi Yetu (run by the Information Department and the only one not privately run); Wasaa; Heko; Sani; Busara; Mfanyakazi; Johari; Mwafrika; Fahari; Film Tanzania; Michezo Music; Michezo; and Bantu Film.

24. Some of these publications are widely known for having policies and views diametrically opposed to those of the official government line. The mere fact that their export has been permitted is, therefore, further proof of the impartial manner with which the Government of Tanzania handles dissent. It is also worth noting that no foreign publication has been banned/prohibited from importation into Tanzania since the enactment of the Newspaper Act by the Tanzania Union Parliament in 1976. The Act repealed and replaced the Newspaper Ordinance and amended the Penal Code. The Act, inter alia, protects the public interest through the prohibition of acts such as sedition, publishing false news likely to cause fear and alarm to the public or to incite people to violence, defamation, etc.

25. As Tanzania's press history shows, the Government has seldom found it necessary to ban the importation of any foreign publication or to prohibit the publication of any local periodical. Since 1976 no newspaper has been banned and even Drum which was banned in 1975, is in circulation in Tanzania. There is no restriction on the importation of newspapers. In all cases, publications that have ceased to exist have done so as a result of a natural death.

26. With regard to the need for publicizing the Covenant, it is true that the Tanzanian media have not been as active as they possible could have been had they used their potential fully. However, they have now undertaken to increase their efforts so in the future they can be expected to play a greater role in disseminating information on the Covenant. It is clear that if they had assistance to enable them to carry more editorial matter (alongside the advertisements which they have to carry for survival), the media's ability to publicize the Covenant would be greatly enhanced. The will is surely there; the problem is scarcity of resources.

27. The article on the freedom of thought, conscience and expression stresses that freedom of expression entails the right to freely hold and express opinions and to seek, receive, and impart information and ideas through any media, regardless of frontiers and freedom from interference with the individual's correspondence. On the basis of the foregoing acts, it is evident that Tanzania is living up to the expectations of the international community in respect of that article.

28. Under sections 22 and 23 of the Tanzanian Constitution, every person is guaranteed the right to work and the right to fair remuneration. The right to work has been defined as guaranteeing every citizen access on equal terms to every function under the State while the right to remuneration ensures that everybody receives remuneration in accordance with the quantity and quality of work done. In guaranteeing citizens access to work, the Government has taken steps to establish employment promotion centres which will cater for publicizing employment openings available to individuals and their placing. However, owing to limited economic resources, it has been difficult for the Government to guarantee every person the opportunity to work, especially in the wage earning sector. The problem is compounded further by the unfavourable international economic conditions which have brought in their wake economic difficulties for Tanzania. As a result, there is growing unemployment and the Government is unable to absorb the available labour force.

29. These rights are accorded to all persons regardless of distinction as to race, colour, sex, language, religion, political or other belief, national or social origin, property, birth or other status. The Constitution provides in section 29 (3), that no citizen of Tanzania shall be accorded any right, privilege or advantage by virtue only of his status, place of origin, occupation or creed. Section 29 (4) goes on to state that no law shall confer any right, status, privilege or advantage to any citizen of Tanzania only by virtue of his status, place or origin or descent. Meanwhile, every person is expected to conduct himself and his affairs in such a way as not to prejudice the rights of freedom of others or the public interest.

30. Affirmative action is being taken by the Government to eradicate apparent biases against women in Tanzania, especially regarding the division of labour along gender lines. In the Civil Service, employment of women is on an equal footing with that of men.

31. Victims of infringements of the provisions of the Bill of Rights may petition to the High Court under section 30 (3) of the Constitution of the United Republic of Tanzania. As reported in the initial report, such people may also resort to such remedies as the writ of habeas corpus and court decrees of certiorari and mandamus.

32. Difficulties encountered in the implementation of the rights guaranteed by the Covenant include the low educational levels of the populace, most of whom do not know what their rights are, compounded by the expenses involved in instituting petitions for redress in the High Court, and the poverty of the vast majority of the people. Most of the Tanzanian population live in rural areas and have not heard of the existence of the Covenant on Civil and Political Rights. Where the Covenant is available, it is in the English language which is not generally spoken by the people. Even where people know that their basic rights have been infringed it is difficult to enforce these rights due to the high cost of hiring advocates and instituting remedial measures in the courts of law.

33. Other dissuasive factors militating against greater enjoyment of the rights set out in the Covenant and the Constitutions of the Party and of the United Republic of Tanzania are outmoded cultural practices and values compounded by historical factors which continue to weigh down women and deny them the opportunity to enjoy their rights to the maximum. On the other hand, police and prison personnel together with magistrates are aware of the contents of the Covenant as part of their training.

Articles 3 and 25

34. At the theoretical level, both the Constitution of the United Republic of Tanzania and that of the ruling Party guarantee equal rights of men and women, as provided for in the Covenant on Civil and Political Rights.

35. The relevant provisions of the Constitution of the United Republic of Tanzania guaranteeing equal rights of men and women include section 5 providing for the right of franchise for every citizen of Tanzania who has attained the age of 18. Furthermore, the basic objective of the Constitution of the United Republic of Tanzania as set out in section 9 (1) is to facilitate the building of the United Republic of Tanzania as a nation of equal and free individuals. enjoying freedom, justice, fraternity and concord through the pursuit of the policy of Ujamaa and Self Reliance. The Constitution of CCM also provides in Part I, section 15, that the objectives of the Party are to ensure that the Government and all public institutions provide equal opportunities to all citizens, men and women alike, irrespective of colour, race, tribe, religion or station in life.

36. According to section 9 (1) the State authority and all its agencies are required to direct all their policy and business towards securing:

(a) The maintenance of respect and due regard for dignity and all other human rights;

(b) The conduct of public affairs in a manner designed to ensure that the national resources and heritage are harnessed, preserved and applied towards the common good and the prevention of the exploitation of one man by another;

(c) An opportunity for every able-bodied person to work, work being defined as any lawful activity by which a person earns his living;

(d) The maintenance and upholding of the dignity of man through compliance with the provisions of the Universal Declaration of Human Rights;

(e) The provision by the Government and all public institutions of equal opportunities in national affairs to all citizens, men and women alike, irrespective of colour, race, tribe or religion of a person of his station in life.

37. Section 12 (1) provides that all men are born free and are all equal, and that every person is entitled to recognition and respect for his dignity. Section 13 (1) provides that all persons are equal before the law and are entitled, without any discrimination, to equal opportunity before the law and equal protection of the law.

38. Section 13 (2) goes on to provide further that no legislative authority in the United Republic of Tanzania shall make any provision in law that is discriminatory either of itself or in its effect. The term "discriminatory" is defined in section 13 (5) as affording different treatment to different persons attributable only or mainly to the respective descriptions by race, place of origin, political opinions, colour, occupation or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded to persons of another such description.

39. Section 21 (1) of the Constitution of the United Republic of Tanzania provides that Tanzanian citizens are entitled to take part in the government of the United Republic of Tanzania either directly or through freely chosen representatives in accordance with the procedure provided by or under the law and every citizen is free to participate in full in the making of decisions which affect him, his livelihood or the nation, while section 22 proclaims boldly that every person has the right to work and is entitled to access on equal terms to every office and function under the State. On the other hand, the Party Constitution sets out as part of its objectives in Article 1, section 5 (6), that CCM seeks to ensure that every able-bodied person works.

40. While in principle men and women have the right to vote and to contest elections as provided for in section 21 (1) of the Constitution of the United Republic of Tanzania, the situation on the ground shows that Tanzania still has a long way to go to achieve complete equality.

41. Women account for slightly over half of Tanzania's population of 23 million. However, their representation in the top echelons of power remains minimal. There are only 25 female Members of Parliament out of a total of 247 Parliamentarians. Four of the 25 are Cabinet Ministers, 2 are Regional Commissioners, out of a total of 25 Regional Commissioners, and 1 is

a member of the Central Committee, the Party organ responsible for the day-to-day running of Party activities. Furthermore, there are only 2 female Ambassadors out of a total of 33 Ambassadors.

42. This state of affairs is the result of the cumulative effect of interrelated factors which include the colonial heritage in the educational set-up and traditional and cultural values which have tended to inhibit women from participating fully in national affairs.

43. Traditional societies had their own educational systems. Under a traditional society, parents played the key role of providing initial education to children. The main constraint of traditional education is that it was segregated by sex. Boys were taught to defend society, while girls were trained to assume the role of mothers and producers of the means of subsistence.

44. Colonial education aggravated the situation. It was limited to a few select members of society, primarily men, since the basic aim of colonial education was to facilitate the recruitment of low-level labour required by the colonial administration. Women suffered under the colonial educational system because they were not considered an important wage-earning labour force and were thus not given much chance of learning. Where they were given an opportunity to study, girls mostly enrolled in domestic and homecraft programmes and, more often than not, opportunities for learning for females were more restricted than those available to males.

45. The legacy of the colonial period in terms of availability of educational opportunities for females persists to this day, especially at the secondary and university levels. However, the Musoma resolution on higher education adopted by the Tanzanian Government in 1974, which called for steps to be taken to link higher education with working experience, exempted female students from the two-year experience requirement before continuing with higher education and adult education. At the primary school level, the goal of attaining universal primary education (UPE) proclaimed in the early 1970s, equalized the number of places available to boys and girls in primary schools.

46. Despite Government efforts, female students still have problems. Some do not complete the seven years of compulsory primary education due to poor attendance, high drop-out rates and teenage pregnancies. Yet other girls are kept at home by parents for early marriages and to help in domestic chores.

47. Though improving slowly, the situation of female students at secondary school and university levels is worse than at the primary level. In 1978 female enrolment at secondary school level stood at 30.3 per cent and rose to 32.4 per cent in 1984. However, enrolment of women at the University of Dar-es-Salaam stood at 8 per cent in 1961; it rose to 11 per cent in 1971 and 14 per cent in 1985.

48. To redress the imbalance in the educational sphere, the Government has increased the enrolment of female students in existing co-educational schools as well as accepting girls in what were traditionally boys' secondary schools.

In addition, the selection procedure for girls for entrance into secondary schools and into Form V was lowered in 1980 in the case of female students so as to enable more females to attain the required standard.

49. Cultural values have had a particularly hard effect on women's rights to inherit what is called "clan land". Many tribes do not allow women to inherit such land thus perpetuating inequality between men and women.

50. However, the Government has been taking steps aimed at redressing this inequality. The villagization programme of 1975 has provided an opportunity for women to own and control land in the villages, while Party and government policies adopted after the adoption of the Arusha Declaration have taken into consideration the underprivileged position of women in Tanzania with a view to its improvement.

51. Recently, a Land Commission has been instituted with a mandate of undertaking a wholesale review of the laws relating to real property in Tanzania. It is expected that the Commission will, in the course of the discharge of its mandate, look into the question of women's legal rights in respect of real property with a view to redressing the existing inequalities.

52. The Party and the Government of the United Republic of Tanzania have been in the forefront of championing the cause of women. As part of the measures to improve the lot of women, a special ministry, headed by a woman, has been created to deal with community development and women and children's affairs.

53. "Umoja wa Wanawake wa Tanzania" (UWT), the women's organization, has been given the opportunity of recommending someone to represent women on the Tanzania Law Reform Commission. The representative will be responsible for presenting the recommendations of UWT to the Commission and to seek the views of women on proposed reforms of the law with the aim of ensuring that any proposed reforms will not be prejudicial to the interests of women.

54. Under section 66 (c) of the Constitution of the United Republic of Tanzania, 15 seats in the Parliament are specifically reserved for women. A similar situation exists in the Party where vulnerable groups, including youths and women, have 5 seats each reserved for them on the National Executive Committee of the Party, which is the chief executive organ of the Party responsible, inter alia, for formulating Party policy and overseeing its implementation.

55. On a slightly different note, the Government has also taken legislative measures to reduce the negative effects of customs and practices. For instance, in matters of custody of children where a marriage breaks down, section 125 of the Law on Marriage Act, No. 5 of 1971, provides that the court may order the child to be placed under the custody of the father or mother, or where need be any relative or any association, with the objective of safeguarding the child's welfare. In making the decision the court is enjoined to consider the wishes of the child's parents, the child (where the child is old enough to express an independent opinion) and customs of the community. The section presumes that a child below seven years of age should best stay with the mother unless there are circumstances militating against this. There is, however, a qualification that before invoking this presumption

the court should first see if there are any undesirable consequences which may arise and disturb the life of the child if an order for maternal custody is made. This means that in case the husband is economically better off than his estranged wife, the facts will militate against invoking the presumption. In the present circumstances, husbands generally have better earning power than women and the net effect is that the law favours men. None the less, the courts in Tanzania have recently tended towards granting custody of children to women because of the provisions of sections 129 and 130 of the Law of Marriage Act, which places the duty of care on men generally, and allows for legal enforcement of this duty by a woman or a man. The negative tendency created by section 125 is therefore alleviated by sections 129 and 130 of the Law. Practice in the courts confirms this by the prevalence of maintenance orders sought by women against defaulting husbands or ex-husbands.

56. Efforts are also being made to involve judges, magistrates and lawyers in identifying customary laws and other enactments which adversely affect women's legal rights. Proposals have already been made to the Law Reform Commission to enable the Commission to look into the laws relating to probate and administration. The aim is to introduce laws on inheritance taking into account issues relating to women's right to own and inherit property, including land.

57. Future action to improve the lot of women will involve educating them and the community about women's legal rights including the custody and the care of children. This state of affairs should also be brought to the attention of members of Parliament and other decision-makers in order to enable them to be conversant with the law so as to enable them to represent women more effectively and to campaign for the abolition of laws which are inconsistent with Tanzania's declared policies which cannot be implemented without the active participation of women.

58. The Government and the Party encourage women lawyers, police officers, intellectuals and other women in decision-making positions to take a leading role in educating the community, particularly women, about women's legal rights and to participate fully in the struggle for women's rights and emancipation as women themselves have a key role to play in effecting change of mentalities, both on the part of men and women.

Article 4

59. In the United Republic of Tanzania the provisions relating to a state of emergency are contained in sections 31 and 32 of the Constitution. The power to declare a state of emergency resides with the President under article 32 (1) of the Constitution.

60. However, even the President's powers to proclaim a state of emergency are proscribed by section 32 (2) which empowers the President to declare such a state of emergency in any of the following circumstances:

(a) If the country is at war or in imminent danger of invasion or involvement in war;

(b) Where there is an actual breakdown of public order and public safety in any part of the United Republic of Tanzania to an extent requiring the invocation of extraordinary measures to restore peace;

(c) Where there is a clear and present danger of an actual breakdown of public order and public safety in any part of the United Republic of Tanzania and which cannot be avoided except through the invocation of extraordinary authority;

(d) Where there is imminent danger of the occurrence of some disaster or natural calamity threatening the community;

(e) Where there is some other kind of public danger which clearly constitutes a threat to the State or its continued existence.

61. Even after any of the above conditions have been met, the President is obliged under section 32 (3) to transmit copies of the Gazette proclaiming the state of emergency to the Secretary-General of the Party and the Speaker of the National Assembly who are thereafter to consult and convene a joint meeting of the National Executive Committee and National Assembly to consider the situation and to decide whether or not to pass a resolution approving the state of emergency issued by the President. A two-thirds majority of the members of the meeting is required for the adoption of such a resolution.

62. Furthermore, Parliament is empowered to enact legislation making provision for situations and procedures whereby certain persons in charge of the functions of government in specified areas may request the President to exercise extraordinary power under this section in those areas where a state of emergency exists, as well as for providing for the exercise of executive power during the period of emergency.

63. A proclamation of emergency shall cease to have effect once it is revoked by the President or if 14 days lapse from the date of proclamation without a joint resolution having been passed by the National Executive Committee and the National Assembly.

64. In any case, a state of emergency automatically lapses after a period of six months or any time at which the joint meeting of the National Assembly and the National Executive Committee revokes the proclamation by a resolution supported by not less than two-thirds of all the members.

65. Since we have not had any proclamation of a state of emergency in Tanzania, it is impossible to give details of practice in reality. None the less, according to the Constitution, derogation from the right to life and inviolability of personal freedom is permissible under section 31 (1) which provides that an act of Parliament shall not be invalid only for the reason that it provides for the taking during periods of emergency, or in ordinary times, of measures that derogate from the provisions of sections 14 and 15 of the Constitution in respect of individuals who are believed to be conducting themselves in a manner that endangers or compromises national security.

66. The Constitution of the United Republic of Tanzania is silent on the requirement imposed upon the government requiring Tanzania to inform other States of the nature and extent of the derogations made and the reasons thereof. None the less, the silence of the Constitution does not imply that Tanzania will not comply with this requirement in the event that a state of emergency is declared in the future.

Article 6

67. The right to life in Tanzania is enshrined in section 14 of the Constitution of the United Republic of Tanzania. Notwithstanding the fact that Tanzania still maintains the death sentence, the right to life is a basic right. The death sentence is imposed only after due process of the law. Even after the sentence has been passed, the convicted person can appeal to the President to commute the sentence under the provisions of section 45 of the Constitution and section 325 (3) of the Criminal Procedure Act of 1985. In practice and according to section 325 (1) of the Criminal Procedure Act, copies of all judgements in which the sentence of death is passed, are forwarded to the President together with notes of evidence taken on trial.

68. However, derogation is permitted in Tanzania under section 31 (i) of the Constitution of the United Republic of Tanzania, which provides that an act of Parliament shall not be invalid for the reason that it provides for the taking, during periods of emergency, or in ordinary times of measures that derogate from the right of life and inviolability of freedom, in relation to individuals who are believed to be conducting themselves in a manner that endangers or compromises national security. None the less, section (2) of the same section provides that the measures taken under section 31 (1) in ordinary times or during periods of emergency shall be only to the extent necessary and justifiable for dealing with the situation that exists during the period of emergency or in ordinary times, dealing with the situation created by the conduct of the individuals in question.

69. The effects of section 31 (i) are further qualified by section 31 (3) which provides that nothing in the section shall be construed as authorizing the deprivation of any person of the right to life, except in respect of death caused as a result of acts of war.

70. In Tanzania, the State not only takes measures to prevent and punish deprivation of life by criminal acts, but also prohibits arbitrary killing by the country's security forces. Section 21 (1) and (2) of the Criminal Procedure Act enjoins the police not to use more force than is necessary in effecting the arrest of a suspect or in preventing the escape of a person after arrest. Police officers are expressly prohibited from doing any act likely to cause the death of a suspect being arrested unless the police officer believes, on reasonable grounds, that the doing of that act is necessary to protect life or prevent serious injury to some other person. In the past, government security personnel have been disciplined for occasioning death to suspected criminal offenders. For example, in 1981, 12 government officials were convicted for killing or sanctioning the killing of two detainees during interrogation. The officials were consequently sentenced to long jail terms while another four senior government officials accepted responsibility for the acts and resigned from their offices.

71. In 1983, two police officers were convicted for manslaughter in the killing of a prisoner. There is a current attempt by an advocate to proceed with the private prosecution of six police officers who are alleged to have killed a suspect while interrogating him. The case has yet to be heard by the High Court.

72. As stated at the beginning of the comments on article 6 above, Tanzania maintains the death penalty in the penal code. This penalty can only be imposed after due process of the law for the most heinous crimes such as murder and treason. The death penalty is mandatory for crimes of murder while it is discretionary for treason. In Zanzibar, there have not been any cases of execution after due process of the law since reform of the judicial system was undertaken in the mid-1970s.

73. There are no plans as yet for abolishing the death penalty in Tanzania. None the less, to the extent that the death penalty can only be imposed in cases of murder and treason, Tanzanian practice complies with the requirements of the Covenant on Civil and Political Rights. As has been noted above, the death penalty is an exceptional penalty. It is imposed only in accordance with the law in force at the time of the commission of the offence [sect. 13 (6) (c)]. Furthermore, the procedural requirements of the Covenant, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence including the right to review by a higher court are all prescribed in the Constitution. Finally, even when convicted the person can appeal for the prerogative of mercy from the President who has power under section 45 (1) to grant pardon, respite or substituting less severe punishment imposed upon a person for any offence. Minors (persons under the age of 18) and pregnant women, cannot be sentenced to death. Again, the President may issue an order for the sentence of death to be commuted or pardoned, under his hand and seal, under section 325 (3) of the Criminal Procedure Act.

74. There are no cases of disappearance of individuals in Tanzania. Under section 7 of the Criminal Procedure Act No. 9/85, it is the duty of every person to give information on any unnatural death by violence or otherwise.

75. As for infant mortality, available statistics indicate it has been decreasing as a result of government action. While the infant mortality rate stood at 161 per 1,000 children born at the time of independence, it has dropped to 100 deaths per 1,000 by 1985, a year for which statistics are available. The Government aims to reduce the rate to 50 deaths per 1,000 children born by the year 2000.

76. Life expectancy has risen from 35 years at the time of independence to 50 years, with a possibility of rising to 60 years by the end of the century. The annual population growth rate stands at 3.2 per cent due to the high birth rate and declining death rate as a result of improved rural medical care and facilities including health education services.

77. Tanzania agrees with the Committee that States have the supreme duty to prevent wars, acts of genocide and mass violence and to promote international peace and security. This is a fundamental obligation of its membership in the Organization of African Unity, the United Nations as well as in the

Non-Aligned Movement. That is why Tanzania has been in the forefront of the search for practical steps to effect real and effective nuclear disarmament. To this end, the former President of Tanzania, Mwalimu Julius K. Nyerere took an active part in the work of the Six Nation Peace Initiative in the late 1980s until it wound up its business in 1988. The purpose of Tanzania's active engagement was to contribute towards the elimination of weapons of mass destruction which threaten humanity's very existence, while at the same time absorbing resources which could be used for promoting social and economic development in the developing nations, and securing the enjoyment of human rights for all.

78. Tanzania welcomes the Committee's call to declare the production, testing, possession, deployment and use of nuclear weapons as crimes against humanity. Tanzania also affirms its readiness to work together with other like-minded members of the international community to take steps to rid the world of this menace.

Article 7

79. Torture, cruel, inhuman and/or degrading treatment are expressly prohibited under section 13 (b) of the Constitution. As mentioned in the General Comments, cases of torture and similar practices do sometimes occur, though very rarely. In such cases an aggrieved person may petition the High Court for relief under section 30 (3) of the Constitution of the United Republic of Tanzania. As stated in the comments under article 2, recourse may be had to decrees of certiorari and mandamus, as well as to the Permanent Commission of Enquiry in cases of administrative abuses of authority.

80. Section 26 (1) of the Constitution enjoins all persons to comply with the Constitution and the laws of the United Republic of Tanzania. Section 26 (2) gives every person the right to institute proceedings for the protection of the Constitution and legality.

81. The Criminal Procedure Act No. 9/85 prescribes the general manner of making arrests and searches of arrested persons, including special procedures to be followed in the searching of women. Under section 26 of the Criminal Procedure Act, search of a woman has to be made by another woman with strict regard to decency. It also sets out the rights and duties of police conducting interviews of persons under restraint and the rights of these persons. These include the right, under section 54 (1) of the Criminal Procedure Act, of the person under restraint to be afforded reasonable facilities to communicate with a lawyer, a relative or friend of his choice. This right, however, can be denied under section 54 (2) by a police officer if the officer believes, on reasonable grounds, that it is necessary to prevent the person under restraint from communicating with the person for reason of preventing the escape of an accomplice or for preventing the loss, destruction or fabrication of evidence relating to the offence.

82. Section 55 (1) of the Criminal Procedure Act provides that persons under restraint shall be treated humanely and with respect to human dignity, while section 55 (2) prohibits the subjection of individuals to cruel, inhuman or degrading treatment while under police custody.

83. Furthermore, persons under restraint requiring medical attention have to be afforded an opportunity to get medical attention. Police officers in charge of investigations of offences in respect of which a child is under restraint have an obligation to inform the parent or guardian of the child that the child is under restraint. For purposes of section 56 (1), a child is defined as being a person under the age of 16.

84. Provisions relating to medical attention do not deal with medical experiments or scientific experiments. Under sections 55 (3), sub-sections (a) and (b), medical attention may be given to a person under restraint when that person requests to be provided with medical treatment, advice or assistance, or where it appears to the police officer that the person under arrest requires such medical care. Furthermore, medical attention may be given under section 63 (1) of the Criminal Procedure Act where a magistrate so orders on application by a police officer in respect of an offence committed. A medical officer may take and analyse any specimen from such a person if he has reasonable grounds to believe that the examination or analysis would provide evidence relating to the offence.

85. Other provisions in the Criminal Procedure Act relating to medical examination are contained in section 219 where the defence of insanity is raised by the accused. In that case, the proceedings are governed by the Mental Diseases Ordinance, Cap. 98 of the Laws of Tanzania.

86. The law relating to evidence is contained in the Evidence Act No. 6 of 1967. Under section 27 (1) of this Act, a confession made voluntarily to a police officer may be used against that person. However, under section 27 (2) the onus of proving that the confession by the accused was made voluntarily lies with the prosecution. In Zanzibar the Law of Evidence decree does not allow the admission of confessions to police officers, even if made voluntarily.

87. The Evidence Act defines a confession as having been made involuntarily, where the court believes that it was induced by a threat, a promise or other prejudice by the police officer to whom it was made or by a member of the police force or other person in authority.

88. It follows from the above that admissions or confessions obtained under torture are not admissible in evidence in Tanzanian law. In addition, under section 10 (5) of the Criminal Procedure Act police officers or persons in authority are prevented from offering inducements, threats or promises to persons charged to induce them into making statements relating to their charges.

89. It is not normal in Tanzania for detainees to be held incommunicado. Persons charged with common criminal acts are held in remand centres and police stations where they may be visited by relatives and lawyers. When they fall sick they are usually taken to a hospital since medical facilities are normally lacking in the police stations themselves.

90. However, persons who are detained under the Preventive Detention Act of 1962 as amended in 1985 may be held incommunicado for some periods. But these periods may not extend beyond two weeks and in any case the names of those persons detained under the Act have to be published in the official gazette.

91. Corporal punishment is given as a measure of chastisement or as a disciplinary measure in schools. It is also given in a number of offences, namely, rape and robbery with violence.

Article 8

92. Forced labour is expressly prohibited under section 25 (2) of the Constitution of the United Republic of Tanzania, and under section 256 of the Penal Code. Exceptions, as allowed under the Covenant, are also expressly provided for under section 25 (3) of the Constitution.

93. Slavery and any form of slave trade is totally prohibited in Tanzania. It is an offence under sections 254 and 255 of the Penal Code.

Articles 9 and 10

94. Section 15 (1) of the Constitution of the United Republic of Tanzania, provides that man's freedom is inviolable and every person is entitled to his personal freedom. Section 15 (2) provides further that no person shall be subject to arrest, restriction, detention, exile or deprivation of his liberty in any manner, save in certain circumstances and subject to a procedure prescribed by law or in execution of a sentence or order of a court in respect of a criminal offence of which he has been convicted or upon reasonable suspicion of his having committed a criminal offence.

95. Under section 3 of the Criminal Procedure Act of 1985, officers in charge of police stations are required to report to the nearest magistrate within 24 hours or as soon as practicable, the cases of all persons arrested without warrant. Similarly, persons arrested under a warrant of arrest under section 32 (3) of the Criminal Procedure Act have to be brought before a court within 24 hours or as soon as practicable.

96. A person charged with any offence has the right to be granted bail. There are two types of bail granted under the Criminal Procedure Act, namely police bail granted under sections 64 to 69 of the Act and bail granted by the courts. Police bail may be granted by a police officer in charge of a police station in cases where the person is charged with a minor offence, or where it appears that further inquiries must be carried out and they cannot be completed within a reasonably short period of time or where the person was arrested without warrant and where there is insufficient evidence to proceed with the case. Where the person arrested is below the age of 15, the accused may be released after his parents or guardian or other reliable person has entered into a cognizance on his behalf.

97. Court control over the granting or denial of police bail is effected under section 67 (2) which provides that where a police officer refuses to grant bail to an accused person, that person has to be brought before a

magistrate to be dealt with according to the law, as soon as it is practicable to do so and not later than the first sitting of a court at a place to which it is practicable to take the person for that purpose. A person in custody may request a police officer for facilities to make an application to a magistrate for bail and when the accused does so, the police officer is required to bring him before a magistrate within 24 hours.

98. Suspects detained or arrested without warrant may apply for bail when brought before a magistrate, under section 148 (3) of the Criminal Procedure Act. A magistrate may also independently direct that any person be admitted to bail or that the bail required by a subordinate court or police officer be reduced.

99. None the less, the powers of the court to grant bail have been restricted by the proviso contained in section 148 (4) in cases where the Director of Public Prosecutions certifies in writing that it is likely that the safety or interests of the United Republic of Tanzania would thereby be prejudiced. However, the Court of Appeal of Tanzania has ruled in a recent case that this provision should be struck from the Criminal Procedure Act as it is ultra vires of the Constitution.

100. Offences of murder and treason are not bailable nor are instances where it appears the accused has previously been granted bail and failed to comply with the conditions attached, or where it appears the accused has previously been sentenced to imprisonment for a term exceeding three years. Similarly, persons accused of offences committed while on bail, of serious assault, of threat of violence or those involving possession of firearms or explosives, may not be granted bail. Bail may also be refused where the court deems it necessary that the accused be kept in custody for his own protection.

101. Under the Preventive Detention Act of 1962, the President can order the arrest and indefinite detention without bail of any person he considers as being dangerous to the public order or national security. The Act, however, was amended in 1985 to take account of changed circumstances and bring it into line with the provisions of the Universal Declaration of Human Rights as well as those of the Covenant on Civil and Political Rights.

102. Under the amended Act, a detainee can now petition the High Court to challenge the legality of his detention on any grounds, under section 3 of the Act.

103. Moreover, the detainee must be informed of the grounds for his detention not later than 15 days from the date of his detention, failure of which the detainee must be released under sections 6 (1) and 6 (2) of that Act. The detainee is now afforded an opportunity of making a written representation to the President in respect of his detention.

104. Finally, all the names of detainees have to be published in the official gazette under section 6A of the Act.

105. Similar amendments have been made to the Deportation Ordinance to enable deportees to challenge the legality of their deportation. As in cases of preventive detention, the deportee has to be informed of the reason for his

deportation, and the names of deportees have to be published in the official gazette. However, there is no provision for compensation in cases of wrongful detention and deportation, since these are Presidential Acts and the President enjoys immunity from both criminal and civil liability for acts done in the discharge of his official functions. None the less, one can sue for abuse of power in cases where breaches are committed by officials other than the President and claim damages in a civil suit. Judicial control over the treatment of offenders held in jails and remand centres is effected through periodic visits by magistrates and judges to check on the actual conditions obtaining in jails and remand centres. In addition to this, section 100 of the Prisons Act makes provision for the appointment of visiting justices to visit prisons and listen to grievances and present them to the Minister for Home Affairs.

106. As a general rule, there is no discrimination in the facilities offered to convicted prisoners on the basis of race, colour, ethnic or other origin or religious belief, though for dietary reasons, food given to the prisoners may differ, such measures cannot be construed as affording different treatment to prisoners by reason of race, colour, ethnic or religious belief. Convicted persons are confined in jails whilst those awaiting trial are restricted in remand centres in keeping with their unconvicted status.

107. Humane treatment also extends to other institutions where persons are lawfully held against their will, including hospitals, detention camps and correctional institutions.

108. Children under the age of 18 are confined in correctional homes and there are special centres to take care of the hard core juvenile offenders. Juvenile offenders who have not yet been convicted are kept separate from adults, though at times, owing to overcrowding or other reasons, they are kept with adult persons. However, this is not a common practice.

109. Convicted offenders, while serving their sentences, are given the opportunity of learning new trades or vocations in the prisons. Training given includes tailoring, carpentry, agriculture and other occupations which will help the convicted person earn an honest living once out of jail. The emphasis is on reformation and rehabilitation rather than on punishment.

110. Visits from family members and other relatives are allowed during weekends under the Prisons Act for reasons of humanity. The same provisions apply to juvenile offenders who, in addition, are given an opportunity of continuing their education while serving their sentences in correctional institutions. All this is aimed at their reformation and social rehabilitation.

Articles 11, 12 and 13

111. Tanzanian practice in respect of failure fo fulfil a contractual obligation differs from the one prescribed by the Covenant on Civil and Political Rights in that both citizens as well as aliens are liable to imprisonment for failure to fulfil a contractual obligation.

112. Section 44 (1) of the Civil Procedure Code, Act No. 49 of 1966 provides that a judgement debtor may be arrested in the execution of a decree at any hour and on any day and shall, as soon as practicable, be brought before the court which may order his detention.

113. In Tanzania, aliens are accorded the same protection as citizens. There is no discrimination in the treatment of aliens based on the nationality or statelessness of the individual. The general principle is that the basic rights are guaranteed to all individuals without discrimination between citizens and aliens. Section 13 (1) of the Constitution provides that all persons are equal before the law and are entitled, without any discrimination, to equal opportunity before and protection of the law. Furthermore, subsections (2) and (4) of section 13 provide that no legislative authority in Tanzania shall make any provision in any law that is discriminatory either of itself or in its effect, and that no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the discharge of the functions of any state office or party and its organs.

114. Rights granted to Tanzanian citizens to the exclusion of non-citizens include immunity from expulsion from Tanzania under section 17 (1) of the Constitution of the United Republic of Tanzania, and the right of access to work on equal terms to public office in the United Republic of Tanzania.

115. Citizens are also guaranteed the right, under section 18 (2) of the Constitution to be informed of developments in the country and in the world which are of concern to the life of the people and their work, and of questions of concern to the community. This is achieved through the freedom of the press as has been outlined under the report on article 2.

116. None the less, under the General Provisions given under section 29 (1) of the Constitution, all residents in the United Republic of Tanzania are entitled to enjoy the basic human rights, and share in the result of the discharge, by every person, of his duty to society.

117. Aliens resident in Tanzania are given equal protection under the laws of Tanzania. Under section 29 (2) of the Constitution, they are entitled to a fair and public hearing by the courts as will be seen in the comments under article 14 and are free from arbitrary and unlawful interference with their privacy, family, home or correspondence.

118. As indicated above, the provisions of the basic rights of the Bill of Rights extend to aliens. Aliens enjoy an inherent right to life. They are not, under the provisions of the Constitution, to be subjected to torture or to cruel and degrading punishment or to be held in slavery and servitude. When lawfully deprived of their liberty they are to be treated humanely and with respect for the inherent dignity of their person.

119. Retroactive penal legislation is not permitted in Tanzania under section 13 (c) of the Constitution. The provision extends to both citizens as well as to aliens. Like Tanzanian citizens, aliens are entitled to freedom of thought, conscience and religion. Under the provision of section 16 of the Constitution, aliens have a right to privacy and to personal security.

120. Entry into and departure from Tanzania is governed by the provisions of the Immigration Act No. 8 of 1972. To be lawfully resident in the United Republic aliens have to comply with the requirement of section 10 (1) of the Act which required that anyone entering Tanzania must be in possession of a valid permit or passport and also obtain a residence permit.

121. There are three types of residence permits issued under sections 12, 13 and 14 of the Immigration Act, namely class A permits, class B permits and class C permits. A class A permit is granted where the alien or some other person furnishes security by depositing with the Immigration Officer a sum of money which is, in the opinion of the immigration authorities, sufficient to cover the cost of returning him, his wife and dependent children, to his country of origin or to some other country which may accept him, together with an additional amount of money not exceeding 25 per cent of the above sum. A class A permit holder is allowed to enter and remain in Tanzania subject to conditions which may stipulate the duration of his stay, the area within which he may reside, together with the restrictions, prohibitions, or limitations pertaining thereto.

122. Class B permits are given to aliens who have been offered specific employment in Tanzania upon satisfying the Immigration authorities that he possesses the qualification or skill necessary for such employment and that his employment will benefit Tanzania. Holders of class B permits are subject to the same conditions as those given to class A permit holders.

123. Those who do not qualify for class A or B permits may be issued class C permits upon more or less the same conditions as those attached to holders of class A or B permits.

124. Permits are issued for a period of two years and may be renewed for a further period of two years. However, the total period of validity of the original permit and renewals should not exceed five years. Immigration authorities may at any time cancel the permit or vary and add to the conditions attached thereto. None the less, such cancellation has to be confirmed by the Minister responsible for immigration matters. Furthermore, as yet another measure of protection against arbitrary decisions aliens aggrieved by the decision of immigration officials may appeal to the Minister. The Minister's decision is nonetheless final and is not subject to review by a court of law.

125. The procedure to be followed in expelling prohibited immigrants who are aliens is contained in section 6 of the Immigration Act. Prohibited immigrants include destitutes, mentally defective persons or those suffering from mental disorder, aliens proved to be suffering from contagious diseases and whose presence is dangerous to the public, prostitutes and those living on the proceeds of prostitution, murderers convicted outside Tanzania, as well as persons served with a deportation order.

126. Under section 7 of the Immigration Act the entry into and presence in Tanzania of prohibited immigrants is unlawful and such aliens are subject to arrest under section 8 (1). None the less, aliens arrested as prohibited immigrants must be brought before a magistrate without delay under section 8 (2) of the same Act.

127. The Minister responsible for immigration may, in his absolute discretion, prohibit entry into Tanzania of any alien or any category or class of aliens under section 23 of the Immigration Act of 1972.

128. The Minister is also empowered to issue deportation orders requiring any prohibited immigrant, any person whose entry or stay within Tanzania is unlawful, any alien convicted of an offence against the provisions of the Immigration Act or regulations made thereunder, together with aliens whose presence in Tanzania is, in the opinion of the President, undesirable, to be deported from Tanzania. Such persons may be detained and kept in custody whilst awaiting deportation under section 24 (1) of the Immigration Act.

Article 14

129. The amendments to the Criminal Procedure Code has brought Tanzanian practice to the requirements of the Covenant on civil and Political Rights for the proper administration of justice.

130. Section 31 (1) of the Constitution provides that all people are equal before the law and are entitled to equal opportunity before and protection of the law. Section 13 (3) of the Constitution provides further that the civil rights, obligations and interests of every person and those of society shall be protected and determined by competent courts of law and other legally established State agencies.

131. Section 13 (6) of the Constitution provides for the right to a fair hearing by courts of law where one's rights and obligations are being determined. The section also guarantees the right of appeal to superior courts or tribunals, and other legal remedies against decisions of the courts. In the same vein, section 186 of the Criminal Procedure Act makes provision for open courts to which the public has access, unless the presiding judge or magistrate considers that publicity would be prejudicial to the interests of justice, defence, public order or morality or to the welfare of juvenile persons or the protection of private lives of persons concerned in the proceedings.

132. Under section 14 (6) (b) of the Constitution of the United Republic of Tanzania, every person charged with a criminal offence is presumed innocent until proved guilty. The onus of proving guilt lies with the prosecution and the accused has the benefit of doubt.

133. The minimum guarantees required under Article 14 (3) of the Convention on Civil and Political Rights are to a large extent catered for under Tanzanian law and practice. Section 23 (1) of the Criminal Procedure Act provides for the need to inform any person being arrested of the grounds of his arrest. However, this requirement is not necessary where by reason of circumstances in which he is arrested, the person ought to know the substance of the offence for which he is being arrested, or where the arrested person makes it impossible or impracticable by his actions for the person effecting the arrest to inform him of the offence for which he is arrested.

134. Section 54 (1) of the Criminal Procedure Act guarantees the right of persons under arrest to reasonable facilities from the police to enable the suspect to communicate with a lawyer, relative or friend of his choice. This section therefore enables a person under restraint to have adequate time and facilities to prepare for his defence on the charges preferred against him. However, under section 54 (2), the police may arrest a suspect where there are reasonable grounds to believe that it is necessary to prevent the suspect under restraint from communicating with any person for the purpose of preventing the escape of an accomplice of the apprehended person, or to prevent the loss, destruction or fabrication of evidence relating to the offence.

135. Section 30 of the Criminal Procedures Act enjoins police officers making arrests without warrant to take or send accused persons before a court of law within 24 hours. The provision is not implemented to the letter owing to problems of shortage of police officers and magistrates. At times, persons stay under arrest for a long time before they are finally taken to court. Cases may take up to two years to be finalized. None the less, as part of measures aimed at reducing congestion in courts, the Government has instituted a two-session court work system. This system enables magistrates to handle more cases than was the case in the past. As an administrative measure to speed up the hearing of cases, the Government has also set up case flow management committees composed of representatives of the Judiciary, the Attorney General's Chambers, the Police and Prisons departments. This Committee is charged with the responsibility of ensuring that cases are dealt with expeditiously. In any case, the general rule under section 34 (c) is that accused persons have to be brought before a magistrate not later than 24 hours after arrest at the most. However, as already observed, this is the ideal that has not always been easy to achieve. Problems include delays in investigations owing to the poor training of the police officers, inadequate transport facilities and other facilities necessary for speedy investigations, and, in some cases, the arrest of suspects before investigations are completed. The law furthermore provides in section 4 (c) of the Criminal Procedures Act that a suspect must be released if after 24 hours no formal charge is laid before him.

136. The right to be tried in his presence and to defend himself in person or through legal assistance, as required in article 14 (d) of the Covenant on Civil and Political Rights is catered for in Tanzania under section 310 of the Criminal Procedure Act which provides that accused persons have the right to be defended by an advocate in criminal cases. The only exception is in respect of cases being heard in Primary Courts where magistrates are not legally qualified personnel and would therefore be overwhelmed by the presence of counsel. In any case, the cases determined by Primary Courts are minor.

137. Section 196 of the Criminal Procedure Act provides expressly that all evidence taken in any trial under the Criminal Procedure Act shall be taken in the presence of the accused. However, under sections 226 and 227 court proceedings can continue in exceptional cases where the attendance of the accused cannot be secured without undue delay or where the accused fails to appear after an adjournment.

138. Legal assistance is provided for at the expense of the Government in all cases where the sentence, upon conviction, could be the death sentence. These include charges of murder, manslaughter and treason. However, a serious drawback in this instance is that the choice of an accused person who is unable to afford the services of an advocate is limited. He can refuse the services of the advocate given by the State, but cannot choose the one he wants to represent him, and in the end he has to accept an advocate given to him by the Government. The poor can solicit the assistance of the Legal Aid Committee of the University of Dar-es-Salaam and of the Tanganyika Law Society which similarly operates a Legal Aid Scheme for the destitute. However, the needs of the poor for legal assistance by far outstrip the capacity of the two bodies to give aid, and the overall impact of these schemes in the administration of justice is negligible.

139. Sections 144 to 147 of the Evidence Act No. 6 of 1967 provides for the course of a trial. Witnesses are first called to give their examination in chief by whichever party calls them. They are thereafter cross-examined by the adverse party and subsequently re-examined by the party calling them. This process ensures that the accused is given enough opportunity to examine the witnesses called against him.

140. Moreover, under section 231 of the Criminal Procedures Act, where a case is made out against the accused person sufficiently to require him to make defence either in relation to the offence with which he is charged or in relation to any other offence, the accused has to be informed of this right to give evidence on his own behalf and to call witnesses in his defence. Under section 231 (4) of the Criminal Procedure Act, the court can take steps to compel the attendance of witnesses for the accused who are not present in the court but who in the view of the court could, if present, give material evidence on behalf of the accused.

141. The procedure to be followed in the High Court is similar to the one in the subordinate courts and is catered for under sections 288, 289 and 290 of the Criminal Procedures Act. If the accused is found to have a case to answer, at the close of the case for prosecution, he must be informed of his right to give evidence on his own behalf and to call witnesses in his defence under section 293 (1) (a) and (b). At the close of the case for the prosecution the accused or his advocate opens his case under section 294 of the Criminal Procedure Act. The accused may call his witnesses who are examined, cross-examined and re-examined as in the procedure under subordinate courts.

142. Section 211 1) of the Criminal Procedure Act guarantees the right of the accused to have the evidence being given in a language which he does not understand, translated, in an open court, into a language he does understand. This right extends to his advocate under section 211 (2). Furthermore, at the discretion of the court, where documents are put forward for purposes of formal proof, the court may interpret as much of these as appears necessary.

143. The right of an accused not to be compelled to testify against himself or to confess guilt is contained in sections 27 and 28 of the Evidence Act which prohibits the admission in evidence of confessions made by suspects whilst in

police custody. Such confessions are only admissible if made in the presence of a magistrate. Similarly, the caution required to be made by a police officer when affecting arrest is aimed at achieving the same objective.

144. The procedure to be followed in the trial of a juvenile person, defined as being between 12 and 16 years of age, is contained in the Children and Young Offenders Ordinance, Chapter 13 of the Laws of Tanzania.

145. Section 3 of the Young Offenders Ordinance requires the court trying a juvenile delinquent to sit in a different building or room from the one in which ordinary court sessions are held. Under section 3 (5) no person other than the court officials, plus the relatives of the accused and parties to the case, their advocates and other persons directly concerned in the case may ordinarily be allowed to attend.

146. Juvenile offenders who cannot be brought before a magistrate forthwith must be released on bail unless they are facing charges of murder, or where confinement is in the interest of the juvenile delinquent, or where the release would defeat the ends of justice. In any case under section 4 of the Act, the juvenile delinquent should not have any association with adults while in custody.

147. The procedure to be followed where a child is convicted of an offence is contained in section 14 of the same Act. Under this section the court is obliged to obtain information about his home, character, antecedents, home life, and occupation so as to enable it to deal with the case in the best interests of the child or young person, as is required under article 14 (4) of the Covenant on Civil and Political Rights.

148. The punishment to be imposed on a juvenile offender takes account of his age and the desirability of promoting rehabilitation. Section 22 discourages imprisonment of children, unless the court considers that the case cannot be dealt with by any method under the provisions of this Act or other Ordinance. Imprisonment in an approved school is the last punishment to be given. Otherwise the juvenile may be released conditionally under the supervision of a person who the courts deem suitable. Where the offence is one for which a fine or compensation of costs may be awarded, the court may order the parents of the juvenile delinquent to pay such fine, costs or compensation under section 21. In more serious offences, such as homicide, or offences carrying a punishment of imprisonment for a term exceeding seven years the court may commit the juvenile to an approved school. In any case, where a young person is sentenced to imprisonment he should, so far as circumstances permit, not be allowed to associate with adult prisoners.

149. There is a separation of powers between the legislature, the executive and the judiciary under section 114 (1) of the Constitution of the United Republic of Tanzania. Though there is no provision expressly spelling it out, the Judiciary is independent in the discharge of its judicial functions.

150. Judicial independence is amply guaranteed through the security of tenure of the Judges of both the Court of Appeal and those of the High Court which is entrenched in the Constitution.

151. The Chief Justice, appointed by the President under section 118 (2) of the Constitution is the Head of the Court of Appeal and of the Judiciary. The Court of Appeal itself is established under section 117 (1) of the Constitution of the United Republic of Tanzania while the Judiciary is defined in section 116 as consisting of the Court of Appeal, the High Court, together with all the courts subordinate to the High Court.

152. Judges of the Court of Appeal known as Justices of Appeal are appointed by the President, in consultation with the Chief Justice, under section 118 (3) of the Constitution from amongst persons qualified for appointment as Judges of the High Court of Tanzania or Zanzibar.

153. On the other hand, the Principal Judge of the High Court together with other Judges of the same court are similarly appointed by the President after consultation with the Judicial Service Commission under section 109 (1) of the Constitution of the United Republic of Tanzania. Though their appointment is subject to Presidential approval, judges, once appointed, are free to discharge their legal duties without fear or favour since they cannot be removed from office save for inability to perform their duties or for misbehaviour. Moreover the office of the Justice of Appeal cannot be abolished while there is a serving incumbent.

154. Justices of the Court of Appeal may retire voluntarily at the age of 60 under section 120 (2) of the Constitution. However all such Appeal Justices have to retire at the age of 65 under section 120 (1) of the Constitution.

155. Judges of the High Court are required to retire compulsorily at the age of 60 under section 110 (1) of the Constitution. They may retire voluntarily at the age of 55 under section 110 (2) of the Constitution.

156. As in the case of the Office of the Justice of Appeal, the Office of a Judge cannot be abolished while there is a serving judge in office.

157. Where the question of removing a Justice of Appeal or a Judge of the High Court arises an elaborate procedure set out in section 110 (6) of the Constitution must be followed. The President is required to set out a Commission composed of a Chairman and not less than two other members, at least half of whom are persons holding the office of Judge of the High Court or Judge of the Court of Appeal in a Commonwealth country.

158. The Commission investigates the matter and reports its findings thereon to the President. It is only after the Commission advises the President that a judge ought to be removed from office that the President can proceed to remove him from office.

159. Furthermore, the emoluments paid out to judges are paid out of the Consolidated Fund and as a result are not subject to debate by Members of Parliament in the National Assembly.

160. Lower down the judicial hierarchy, are the District and Resident Magistrates Courts and the Primary Courts, manned by District and Resident Magistrates and Primary Court Magistrates respectively.

161. Powers of appointment, promotion and discipline of magistrates and other judicial officials in Mainland Tanzania are vested in the President under section 113 (1) of the Constitution of the United Republic of Tanzania. The President has delegated these powers to the Judicial Service Commission established under section 112 (1) of the Constitution. The Commission is made up of the Chief Justice who is the Chairman of the Commission, the Attorney-General, a Judge of the Court of Appeal appointed by the President in consultation with the Chief Justice, the Principal Judge of the High Court and two other members appointed by the President.

162. As can be seen, the existence of the Judicial Service Commission ensures that there is a high degree of independence and autonomy for the Judiciary in the appointment, promotion and disciplining of magistrates. In practice, magistrates are fully independent in the discharge of their day to day functions and have security of tenure. They are, however, liable to dismissal from service in cases of serious misbehaviour or of inability to discharge their functions owing to physical or mental infirmity.

163. Judges have to have the following specified qualifications before being appointed to the Office of Judge of the High Court or Justice of Appeal of the Court of Appeal of Tanzania under sections 109 (8) and 118 (3) of the Constitution. The specified qualifications mean the professional qualifications prescribed by the Advocates Ordinance or any law amending or replacing that ordinance, the possession of which is a prerequisite for enrolment as an advocate in Tanzania or Zanzibar. The person must have held the specified qualification for a period of not less than five years under section 109 (7) of the Constitution. The President can, however, dispense with the five-year requirement and appoint, under section 109 (9), a person having held the specified qualifications for a period of less than five years where it appears in his wisdom, after consultation with the Chief Justice, that by reason of special circumstances the person is capable, worthy and suitable for appointment as a Judge of the High Court.

164. Lower down the judicial hierarchy are Resident Magistrates and District Magistrates and Primary Court Magistrates. Resident Magistrates are appointed to their posts after graduating with LLB degrees from a recognized University and having undergone internship in the Attorney General's Chambers for a period of about one year.

165. The District Magistrates, on the other hand, are not university graduates They are promoted on the basis of their experience in the judiciary as Primary Court Magistrates or Chief Clerks and after successfully pursuing a one-year Ordinary Diploma in a Law Course. Similarly, Primary Court Magistrates do not have a university education. In recent years they have been given nine months training in basic law, at the Institute of Development Management in Morogoro.

166. Military Tribunals do not try civilians in Tanzania. They cater for military personnel only. Even here appeals against decisions made by Military Tribunals lie with the High Court when it sits as a Court Martial Appeals Tribunal. This ensures that normal standards of justice are, in the final analysis, adhered to.

167. Other specialized Tribunals in existence in Tanzania include the Industrial Court of Tanzania, dealing mainly with the administration of labour laws and adjudication in industrial disputes, the Rent Tribunal specializing in the resolution of disputes involving the fixing of rent and other matters relating to housing, and the Tax Appeals Tribunal.

Articles 15 and 16

168. As reported under articles 13 and 14, retroactive legislation is not allowed under section 13 (c) of the Constitution of the United Republic of Tanzania. By implication, no heavier punishment can be imposed than the one that was applicable at the time when the criminal offence was committed.

169. Recognition of every individual as a person before the law is assured under section 12 (1) and (2) and Section 13 of the Constitution of the United Republic of Tanzania which provide that all men are born free and equal and that all persons are equal before the law and are entitled to equal opportunity before, and protection of the law without any discrimination.

Article 17

170. The right to privacy and personal security in Tanzania is provided for under section 16 of the Constitution. The protection granted under this section extends to the person, and his dwelling place, respect for his person, his private and family life, as well as to his home and his private correspondence. However, opening of parcels is allowed for customs inspection under the East African Customs and Transfer Tax Act of 1970, as read in conjunction with the Customs and Excise Duty Act No. 19 of 1977. Such inspection can only be done by authorized Customs Officers. Protection against both unlawful and arbitrary arrest is given under section 13 of the Criminal Procedure Act which requires arrests to be made upon the production of warrants of arrest. Section 14 of the Criminal Procedures Act spells out those situations in which police may arrest without warrant. These include instances where the accused is caught in flagrante delicto, loiterers, a person wilfully obstructing a police officer in the execution of his duty, persons found desecrating the national flag as well as persons found with objects which might reasonably be suspected to have been stolen.

171. Interference with privacy, home and family is allowed under section 19 (1) of the Criminal Procedure Act, in situations where entry by the police is necessary to effect the arrest of a suspected offender whom police believe has entered or is within any house or place. Otherwise, entry by police into a house for conducting a search is only permitted when the police obtain a search warrant from the courts of law.

172. Similarly, search of the body which can be construed as a violation of privacy, has to be done under the procedure set out in section 24 of the Criminal Procedure Act. A special procedure is to be followed in searching women under section 26 of the Criminal Procedure Act. Women can only be searched by other women.

173. The term "family" has not been defined legally under Tanzanian law. As generally understood, a family includes the father, mother, children and close relatives such as uncles, aunts, nephews and nieces. However, it does not include homosexual unions of any type whatsoever.

174. Computerization and the use of data banks are still in their infancy in Tanzania and gathering of personal information on computers and in data banks has not become widespread.

Article 18

175. Freedom of thought, conscience and religion are guaranteed section 19 (1), (2) and (3) of the Constitution. The fact that Tanzania is a secular State has ensured the growth of a culture of the complete acceptance by the population of the freedom of thought, conscience and religious worship and of the equality of all religions.

Article 19

176. Under section 18 (1) of the Constitution, every person is entitled to freedom of opinion and expression. This freedom entails the right to freely hold and express opinions and to seek, receive and impart information and ideas through any media as well as freedom from interference with his correspondence.

177. None the less, enjoyment of this right is subject to the laws of the land, some of which contain an element of control by the State over the enjoyment of this right. While the radio and television is owned and, to some extent, controlled by the Government, the print media, with the exception of the Government and Party Newspapers, is completely free of official control. As noted in the comments on Article 2, there are several (over 100) registered newspapers and publications owned by private individuals which are free from government control and vigorously express controversial views as part of the exercise of their right to freedom of expression. Unfortunately, due to their weak financial basis most of them operate for a short period of time and then fold up.

Article 20

178. In the pursuit of a good neighbour policy which has guided the country since independence, Tanzania has endeavoured to maintain cordial and friendly relations with all its neighbours. There is no specific legislation expressly outlawing propaganda for war because the need has not arisen.

179. The Constitution of the United Republic of Tanzania provides in article 9 (g) and (h) that all State authorities and agencies are required to direct all their policy and business towards ensuring that the Government and all public institutions provide equal opportunities to all citizens, men and women alike, irrespective of the colour, race, tribe or religion of a person or his station in life and that all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism are eradicated. Incitement to violence is a crminal act under section 63A of the Penal Code while at the same time raising discontent and ill will for unlawful purposes

is also a crime under section 63 (b) of that Code. Advocacy of national or religious hatred constituting incitement to discrimination, hostility or violence are acts which can be said to be acts of incitement to violence and are thereby covered under the Penal Code.

180. From the start, Tanzania, ensured that matters of State and religion were kept completely separate and its citizens were encouraged to respect one another's religion. The Government and religious leaders have scrupulously maintained this separation as a result of which Tanzania has been spared the sectarian problems which have bedevilled other countries.

Articles 21 and 22

181. Under the provisions of section 20 (i) of the Constitution of the United Republic of Tanzania, every person is entitled to freedom of peaceful assembly, association and public expression. In the exercise of this right, people are entitled to assemble freely, to associate with other persons and to form or belong to organizations and associations formed for the purposes of protecting or furthering their common interests. People cannot be forced to belong to any association. However, this provision has a major qualification where the formation of political parties are concerned. Under section 3 of the Constitution, Tanzania is a one-party State. Therefore the right of Tanzanians to participate in the political life of the country is limited to participation in the confines of CCM. Similarly, there is restriction on the ability of people in Tanzania to join trade unions. Workers in Tanzania can join JUWATA, one of the mass organs affiliated to CCM. Apart from these restrictions, Tanzanians are free to form associations and clubs as well as cooperative societies as they wish. There are numerous clubs, cooperatives, social centres and other associations which give testimony to the enjoyment of the right of association by Tanzania's citizens.

182. As indicated in the comments on Article 3, the establishment of a one-party State system in Tanzania was motivated by a desire to foster the growth of a genuine democracy in the country and to replace the inherited system that was not democratic. By way of elaboration, below is a quotation from an address by former CCM Chairman, Mwalimu Julius Nyerere on 16 August 1990 at the Party's Special National Conference when he also relinquished the Chairmanship of the Party.

> "At independence, Tanzania had many political parties; but it was not a democracy. In the Tanganyikan election of 1960, TANU fought against many other Parties. Yet out of 71 constituencies, it won 70 seats and lost one. In the one seat which we lost, the official TANU candidate was opposed by a TANU member who disapproved of the choice made. He stood as an independent candidate, and beat TANU. In that constituency an election really took place; in the other 70 constituencies either there was no election at all - in 58 the TANU candidate was unopposed - or there was (in 12 constituencies) to all intents and purposes a shadowy pretence of an election between the real Party, TANU, and so-called Parties (whose candidates always lost their deposits).

In the Presidential election of October 1962, the TANU candidate was opposed by the candidate of another Party. But this again was an unreal contest. The opposing Party got 21,276 votes, and TANU got nearly 1,128,000 votes. The Parties which opposed TANU either died immediately, or began to die a natural death!

It was these experiences which led us to set up a Commission charged with the task of proposing a system of One-Party democracy. The election of 1965 used the recommended system. We decided to have two TANU members competing with one another, and to give the voters a chance to choose one of them. The result was real democracy. For the first time, it was an election covering the whole country, and previous MPs - including Ministers - were able to be defeated by new candidates. We have continued with that system until now. Thus, we did not adopt a One-Party system in order to get rid of democracy, but in order to establish and maintain democracy.

The 1963 election in Zanzibar was also conducted under a Multi-Party system. But the British colonialists and their clients so arranged it that the majority of the people - the Africans - could not win in that election and form the Government of independent Zanzibar. Therefore, the Government of 'free' Zanzibar was formed by the Sultan's friends. No system which denies justice to the majority can be called democratic. In December 1963 Zanzibar had many Parties, but no democracy. There is a Swahili saying, 'Give to the many, if you don't, they will take for themselves.' On 12 January 1964, the majority who had been denied their rights by stupid gerrymandering, seized the rights they had been denied. The Revolutionary Government was not elected by voting; but it was a Government of the majority, achieved through sacrifice. The Parties which opposed the Revolution were dissolved; one Party which accepted the Revolution joined hands with the Afro-Shirazi Party (ASP)."

Reminding the audience of his often repeated belief that the decision to continue with a one-party system cannot be a permanent decision, Mwalimu Nyerere concluded by repeating his own belief that one day Tanzania will adopt a multi-party system.

183. The Party has now opened up a debate on the desirability or otherwise of continuing with a one-party State. In March 1991 the President set up a Presidential Commission with a mandate to canvas the views of the people with a view to enabling a decision to be made whether to continue with the present system or to change into a multi-party system. The Commission is expected to submit its final report in mid-1992. In similar fashion both JUWATA, the official labour union and WASHIRIKA, the umbrella national organization of cooperative unions, have expressed a desire to transform themselves into associated members of CCM rather than affiliates so as to give them freedom in the conduct of their activities. As yet this remains a proposal and the debate continues. After the Commission has submitted its report, should it become clear that a multi-party system of government is desirable for Tanzania, the necessary amendments will be made to the Constitution. Tanzania will be reporting on the outcome of this debate in its next periodic report.

184. Other controls in the exercise of the right to free association include the requirement that official permission has to be obtained beforehand from the Government for the holding of any procession, meeting or rally, as well as the requirement that all associations have to be registered with the Ministry of Home Affairs under the Registration of Societies Ordinance. However, these are administrative measures for convenience and are not meant to stifle peoples' freedom to associate with others.

185. The right of appeal upon conviction, which is provided for under article 14 (5) of the Covenant on Civil and Political Rights, is given effect under section 359 (1) of the Criminal Procedure Act. Any person aggrieved by the findings, sentence or order made by a subordinate court may appeal to the High Court under this section. The Court is supposed to inform the convicted person of the period of time within which he has to give notice of his intention to appeal and to lodge his petition of appeal. Appeals to the High Court may be on matters of both law and fact. To enable the accused to lodge his appeal, section 313 provides that the accused may on application be provided with a free copy of judgement in his own language, if practicable without delay. Provisions on appeal include section 20 of the Magistrates Court Act of 1984.

186. Section 61 of the Criminal Procedure Act makes provision for compensation to persons convicted on a mistaken identity as a result of which he is prosecuted or punished and suffers loss or injury. Such a person is entitled to reasonable compensation as if he were a victim of a crime. Furthermore, under section 347 of the Criminal Procedure Act, accused persons who are victims of frivolous or vexation charges may be paid a reasonable sum determined by the court as compensation for the trouble and expense to which the accused may have been put, by the complainant. However, due to ignorance of their rights not many people have taken advantage of this. It is a subject under consideration by the Law Reform Commission.

187. Lastly, section 137 of the Criminal Procedure Act provides that no one may be tried or punished twice for an offence for which he has already been finally convicted or acquitted in accordance with due process of the law as provided for in article 14 (7) of the Covenant on Civil and Political Rights.